

APR 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

QU JIANG,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-73359

Agency No. A95-300-795

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 22, 2008^{**}

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Qu Jiang, a native and citizen of China, petitions *pro se* for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum,

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal, and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. §1252. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we dismiss in part, and deny in part the petition for review.

We lack jurisdiction to review the IJ’s determination that Jiang’s application for asylum was untimely because the underlying facts concerning Jiang’s arrival date are disputed. *See Ramadan v. Gonzales*, 479 F.3d 646, 657 (9th Cir. 2007) (per curiam).

We lack jurisdiction over Jiang’s due process translation claim because it was not exhausted before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

Substantial evidence supports the adverse credibility determination based upon Jiang’s demeanor while testifying because the IJ identified Jiang’s hesitation and unresponsiveness with sufficient particularity to support the demeanor finding. *See Arulampalam v. Ashcroft*, 353 F.3d 679, 686 (9th Cir. 2003). Additionally, Jiang’s testimony was inconsistent with his application regarding the location and details of his second arrest. *See Li*, 378 F.3d at 962-64. We therefore deny the petition with respect to Jiang’s withholding of removal claim.

Substantial evidence also supports the determination that Jiang failed to establish that he is eligible for CAT relief. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.